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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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EX PARTE OR LATE FILED

October 17, 1994

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

EX PARTE OR LATE FILED ORIGINAL

Re: Ex-Parte Letter in MM Docket No. 92-266

Dear Mr. Caton:

In accordance with the Commission's ex parte rules, 47 C.F.R. §§ 1.1204(b) and 1.1206(a)(4), an original and one copy of this letter are being filed in MM Docket No. 92-266, with a second copy submitted for the staff member involved, as notification that on October 14, 1994, Stephen Brenner, Esq., Executive Vice President, Business Affairs, Operations and General Counsel of USA Networks, wrote a letter to Meredith J. Jones, Chief of the Cable Services Bureau. A copy of this letter is submitted herewith.

Kindly place this material in the public file.

Very truly yours,

Ian D. Volner

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Susan Ness
Commissioner Rachelle B. Chong

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Stephen A. Brenner
*Executive Vice President, Business Affairs,
Operations and General Counsel*

USA NETWORKS

October 14, 1994

Ms. Meredith J. Jones
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 918
Washington, DC 20554

Dear Ms. Jones:

We understand that the Commission is considering modifying certain of the previously-announced rules as part of the current "going-forward" rulemaking. In particular, it is reported that the Commission may take away the cable operators' right to apply a seven and one-half percent markup to increases in license fees charged by programming services on regulated tiers. USA Networks believes that deletion of the markup would be inappropriate, would serve no public policy and would be at cross purposes with other actions which the Commission is contemplating.

There is a serious disconnect between solving the problems associated with the addition of new services and reopening the 7.5 percent markup on license fee increases for established services. An essential purpose of the 7.5 percent markup was to provide cable operators with an incentive to retain existing services within regulated tiers. This is unrelated to the need for other incentives to encourage the addition of new services. The fact is that there has not been significant substitution in regulated tiers. To that extent, at least, the markup has worked. The last thing that the industry needs is for the Commission to reverse a policy it adopted only recently. If the Commission were to do so, particularly when no comment was sought regarding this matter, it would only undermine the industry's confidence that it can rely on rules promulgated by the Commission.

Deletion of the 7.5 percent markup would seriously disadvantage existing networks. While we believe that the percentage level is too low, it does provide cable operators with some incentive to maintain stability of services in regulated tiers in the face of increasing costs associated with the carriage of those services. If anything has been clear in the last 18 months, it is that cable operators must be given some economic incentive, beyond the literal calculations of the benchmark rates, to maintain the level and quality of service in

regulated tiers and must be given a greater incentive to add services to these tiers. From our discussions at the Commission, it appeared that this fact has been recognized and that cable operators will receive a markup for adding services to regulated tiers. We cannot understand why the pass-throughs with respect to existing services should be treated differently.

We also understand that the Commission is considering limiting the period of time in which new services may be "incubated" on regulated tiers. We believe that such a decision is best left to the marketplace. With the plethora of viewing alternatives available, it takes time for a subscriber to become acquainted with newly-added services. We see no reason for the Commission to set an artificial time limit by which a new service must be taken off a regulated tier.

At the risk of being repetitive, the primary problem facing both cable operators and programming services is uncertainty regarding the addition of new services. This uncertainty has led to 18 months of stagnation that has adversely affected every fledgling and new programming service. We urge the Commission to provide the industry with a comprehensive set of going forward rules with respect to new services.

If you have any questions regarding our views, please feel free to call me directly at (212) 408-8850.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen A. Brenner". The signature is fluid and cursive, with the first name "Stephen" and last name "Brenner" clearly distinguishable.

Stephen A. Brenner

cc: All Commissioners